

## **MINUTES**

### **MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON FISH AND GAME**

**Call to Order:** By **CHAIRMAN KEN MESAROS**, on February 2, 1999 at 3:09 P.M., in Room 402 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Ken Mesaros, Chairman (R)  
Sen. Mike Taylor, Vice Chairman (R)  
Sen. Tom A. Beck (R)  
Sen. Al Bishop (R)  
Sen. William Crismore (R)  
Sen. Steve Doherty (D)  
Sen. Pete Ekegren (R)  
Sen. Jon Ellingson (D)  
Sen. Eve Franklin (D)  
Sen. Bea McCarthy (D)  
Sen. Chuck Swysgood (R)  
Sen. Jack Wells (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Leanne Kurtz, Legislative Branch  
Adrienne Pillatzke, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 241, 2/2/1999; SB 293,  
2/2/1999  
Executive Action: None

#### **HEARING ON SB 241**

**Sponsor:** SENATOR STEVE DOHERTY, SD 24, Great Falls

**Proponents:**    **Arnie Olsen, Fish Wildlife and Parks**  
                          **Ralph Martin, Access Montana Outdoor**  
                          **Scott Birkenbuel, Access Montana Outdoor**  
                          **Lloyd Linden, Citizen**  
                          **Darrell Harris, Citizen**  
                          **Jean Johnson, Montana Outdoors and Guides**  
                          **Association**

**Opponents:**     None

**Opening Statement by Sponsor:**

**SENATOR STEVE DOHERTY, SD 34, Great Falls** stated SB 241 was created through contact with a constituent who had been diagnosed as disabled. The constituent had purchased a license and needed a refund which was a hassle and he felt he needed to do something for the people who get disabled hunting and fishing licenses. The Department of Fish Wildlife and Park has some concern about who gets to certify a hunter who will be eligible for the disabled hunting license, using certified companions and designated shooters. He stated he has plans to work with the department to help solve those problems.

**Proponents' Testimony:**

**{Tape : 1; Side : A; Approx. Time Counter : 3:12}**

**Arnie Olsen, FWP**, submitted written testimony, **EXHIBIT(fis26a01)**.

**Ralph Martin, Access Montana Outdoors**, stated he has no problem with the issues raised. He liked how the bill provides relief for people who have not received knowledge of the current process for licensing and look forward for the bill to be enacted. He was pleased FWP left it open to possibly look at the designated shooter and the review board as a way to resolve issue about who might or might not qualify for license. He made a suggestion to change some language that was inappropriate.

**Scott Birkenbuel, Access Montana Outdoors**, commented on the language that was talked about earlier.

**Lloyd Linden, Citizen**, stated he has a license to hunt as handicapped. The bill will help out alot of deserving people. He questioned some language in the bill. He believed the physician should certify the people as disabled, not the department.

**Darrell Harris, Citizen**, said he would like to take the power from FWP to physicians to certify disabled hunters. He filed a

complaint of discrimination against Department of FWP in 1992 due to being turned down for a disabled hunting license, **EXHIBIT(fis26a02)**. He commented on the difficulties a disabled person faces to get their application notarized and submitted his application, **EXHIBIT(fis26a03)**. He felt the bill should apply to antelope licenses too, and set aside license for disabled people. He submitted a disabled resident application for an antelope license, **EXHIBIT(fis26a04)**.

**Jean Johnson, Montana Outdoors and Guides Association**, stated in 1995 the legislature expanded the hunting disability laws to include nonresidents to shoot from a vehicle. She referred to a VFW magazine article which published outdoor hunting for disabled hunters.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

***{Tape : 1; Side : A; Approx. Time Counter : 3:24}***

**SENATOR BECK** asked if the department has rules or regulations they follow on a doctor's signed disability form. **Arnie Olsen** replied yes. The department has difficulty figuring out where to draw the line for restricting people from license or where people abuse the privilege. The department has had both cases where someone who deserved a license didn't receive one and one who has taken advantage of it. The alternative solution was to develop a board, consisting of a licensed Montana, a disabled individual and a game warden, to make the decisions.

**SENATOR MCCARTHY** asked what the difference in legislation for the proposed disabled hunter compared to the disabled fisher persons. **MR. OLSEN** answered he couldn't give all the nuances of that issue. He stated the bill addresses primarily hunters. **SENATOR MCCARTHY** commented that the legislation at that time worried about the access of the individual getting to the stream with the wheelchair. The legislature permitted another individual to transport them to the stream and back even as far as baiting the hook. She asked if that is different than being allowed to sit in a field with the game. **Mr. Olsen** replied if an individual didn't qualify to hunt from a vehicle because of their ability to walk a short distance but felt that was inadequate, the issue would go to the board to decide.

**SENATOR SWYSGOOD** asked what is the process for a person to be certified as disabled. **Mr. Olsen** responded there is a form that is required from the doctor and they bring it to the department

where they make the determination. If there is a question, a warden is called out to help make the determination.

**SENATOR SWYSGOOD** asked how many disabled license are given out a year. **Connie Mills, Helena Information Center**, answered that there were 4,035 applications who purchased a resident person with a disability conservation license last year. **SENATOR SWYSGOOD** asked if the department is suggesting a board will determine if a person is disabled or not. **Mr. Olsen** explained only when there is a dispute such as if somebody gets denied. It will provide an appeal process which the department does not currently have. The board becomes the final decision maker. **SENATOR SWYSGOOD** asked out of the 4,035 applicants how many were denied. **Connie Mills**, stated there are no records to show but probably 1,000 to 1,200 were certified to permit from the vehicle. **SENATOR SWYSGOOD** asked if a doctor signed a statement stating a person is disabled is that not good enough for the department. **Mr. Olsen** replied there have been abuses like that where nurses have signed not doctors or the applicant goes to a doctor until someone will sign it.

**SENATOR FRANKLIN** asked why there isn't a standardized way to allow a physician and/or registered nurse to sign the statement. **Mr. Olsen** responded that is certainly an option. The department follows the statutes that are written.

**SENATOR TAYLOR** told a story of how hunters abused the system on his ranch.

**SENATOR MCCARTHY** asked if there is a difference in the cost of a license for handicapped individual and what is the price. **Mr. Olsen** answered yes and it is half price. **SENATOR MCCARTHY** asked if they tag an animal differently because they are handicapped. **Mr. Olsen** replied no they don't but they have a different conservation license that has different wording.

**SENATOR BECK** commented on the amendment which will change the wording to a "companion" instead of a shooter. He asked if the companion will also still be able to shoot this animal for the blind hunter. **Mr. Olsen** stated the amendments would do two things. It would provide more rule making to deal with better criteria for whom a companion can be. The second thing it does is it directs the department to go into rule making to address the issue. **SENATOR BECK** asked if the department would address the rules so that a person who was declared blind could have someone else assist them. **Mr. Olsen** replied that the amendments allow the department to go through the rule making process.

**SENATOR SWYSGOOD** stated the department would assume the person, helping the blind person, is not handicapped and not blind. He asked wouldn't he fall under the same rules as everyone else as it relates to hunting. **Mr. Olsen** responded that the rules under which a companion could make that shot. It is illegal to shoot someone else's game.

**SENATOR WELLS** asked if there is any other way without getting a doctor's notarized signature. **Mr. Olsen** replied that is a difficult issue. The department felt the board is a best way to deal with it. **SENATOR WELLS** wondered if there were doctors in the state who would volunteer to help and be on an assigned list. He suggested the department look into getting certified physicians to volunteer and sign certificates. **Mr. Olsen** thanked Senator Wells for that suggestion.

**SENATOR FRANKLIN** asked Lloyd Linden for his comments. **Lloyd Linden** stated his conservation license is the same as anybody else's although he has a rubber stamp from the FWP. The Forest Service provides disabled hunters to special areas such as behind locked gates. FWP just rubber stamps their conservation license. Game wardens try to harass people who are handicapped, maybe looking for people who are not as handicapped as others. A walking crutch, cane or wheelchair should be sufficient reason for getting a handicapped rubber stamp.

**SENATOR BECK** asked if the department required a Montana physician to declare somebody disabled or can there be an out-of-state physician. **Mr. Olsen** answered they are required to have a Montana physician. The department no longer requires a notarization. The conservation license is \$4 and with a \$4 disabled conservation license they get free fishing and free bird license. In addition, they are eligible for half price on deer and elk permits. **SENATOR BECK** asked if they get special permits for half price. **Mr. Olsen** replied no.

**SENATOR MESAROS** commented on how a landowner will be penalized if he sets aside land for disabled or first time hunters due to block management. He wondered what Mr. Olsen's response is. **Mr. Olsen** countered those situations need to be looked at. The department does not want to penalize landowners for participating. There is another bill that would allow the commission to establish special hunts for the disabled.

**SENATOR WELLS** asked Darrel Harris for his comments. **Darrel Harris** stated the Forest Service provides access for disabled hunters and block management provides nothing. He asked Mr. Olsen to address why block management does not provide opportunity for disabled hunters. **SENATOR SWYSGOOD** asked why

block management does not provide opportunity for disabled hunters. **Mr. Olsen** stated block management is on private land and the access is determined by the landowner. **SENATOR SWYSGOOD** asked what is the cost to have physicians review the appeals. **Mr. Olsen** responded that it would be the department's goal to have volunteers in those areas. The department feels it will be unreasonable to have one board that would have to travel.

**SENATOR MCCARTHY** asked for Scott Birkenbuel for his comments. **Scott Birkenbuel** commented he has been working with Allen Charles to establish a group of landowners who will allow disabled hunters to hunt in compliance with block management. He discussed a few districts who have established such groups.

**SENATOR BECK** asked if he could designate handicapped hunting on a block managed land. **Mr. Olsen** replied the department talks with the landowner on what type of restriction they want.

**Closing by Sponsor:**

***{Tape : 1; Side : B; Approx. Time Counter : 3:52}***

**SENATOR DOHERTY** stated the bill is plowing new ground due to new technology which allows disabled people to hunt. He will work on cleaning up the language of the bill. They need to give some appeal rights for people who are turned down for the license.

***{Tape : 1; Side : B; Approx. Time Counter : 3:56}***

**HEARING ON SB 293**

**Sponsor:** **SENATOR AL BISHOP, SD 9, Billings**

**Proponents:** **Arnie Olsen, Fish Wildlife and Parks**  
**Janet Ellis, Montana Audubon**

**Opponents:** **Denise Barber, Montana Sierra Club**

**Opening Statement by Sponsor:**

**SENATOR AL BISHOP, SD 9, Billings** stated SB 293 takes birds off a laundry list. He referred to the Code of Federal Regulations list of endangered animals. The commission will handle the listing and delisting of falconry.

**Proponents' Testimony:**

**Arnie Olsen, FWP**, submitted written testimony, **EXHIBIT(fis26a05)**.

**Janet Ellis, Montana Audubon**, stated the Audubon feels there are enough checks and balances in the system that there is adequate protection. FWP has by rule listed endangered species and Peregrine Falcons are on that list. There has to be a rule making amendment to be able to use Peregrines in falconry. There are also falconry rules that can get this very species specific. The bill makes the law more flexible.

**Opponents' Testimony:**

**Denise Barber, Montana Sierra Club**, stated the club is not opposed to falconry. There are currently 26 known pairs of Peregrines in Montana but there is a distribution problem. The club feels the birds need a little more time to recoup.

**Questions from Committee Members and Responses:**

**SENATOR BECK** asked if there is anybody who is using an endangered species for falconry and how many birds will be listed compared to what is listed now. **Mr. Olsen** responded that there are 54 licensed falconers in Montana and three are waiting to be licensed. They use several different species. There are six legally licensed facilities that propagate raptors in Montana. **SENATOR BECK** asked if they are using them right now and will they be not allowed to use them once this bill goes into effect. **Mr. Olsen** stated all this bill does, is ties it to the state and federal endangered species act.

**Closing by Sponsor:**

***{Tape : 1; Side : B; Approx. Time Counter : 4:04}***

**SENATOR BISHOP** stated the bill takes birds out of the statute and there is no reason to for them to be statutorily protected. This is a code of federal regulation.

**ADJOURNMENT**

Adjournment: 4:06 A.M.

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SEN. KEN MESAROS, Chairman

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ADRIENNE PILLATZKE, Secretary

KM/AP

**EXHIBIT (fis26aad)**